AUTHORIZATION FOR THE U.S. COMMISSION ON CIVIL RIGHTS, FISCAL YEAR 1983

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

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WEDNESDAY, AUGUST 11, 1982

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:48 a.m., in room 5110 of the Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. Ladies and gentlemen, today's hearing is part of the continuing oversight of the U.S. Civil Rights Commission by the Subcommittee on the Constitution. In particular, we will consider the fiscal year 1983 authorization for the U.S. Commission on Civil Rights.

The administration is seeking a fiscal year 1983 budget of $11.6 million, an approximate $700,000 reduction from the present fiscal year figure of $12.3 million. It is a slightly less substantial reduction from the $12 million authorization bill approved by this subcommittee during the last session. The administration, further, is recommending a reduction-in-force of 33 from the current 248-member Commission staff.

The need to promote equal treatment for all individuals without regard to race, color, religion, sex, or national origin, has not diminished in importance since the Commission was established exactly a quarter century ago. While impressive progress has been made, in my opinion, in reducing the incidence of discrimination—both official and private discrimination—there is little question that there is a continuing role for the Commission. Under its charter, the Commission is charged with studying and collecting information concerning the state of civil rights in the United States and serving generally as a clearinghouse on this issue. The Commission has no law enforcement or regulatory authority.

As I have noted in the past, the Civil Rights Commission has done much to facilitate the progress of the past quarter century in the area of civil rights. The work and the studies of the Commission have contributed directly to legislative, executive, and judicial efforts to move this country in the direction of a colorblind society.

As I have also noted in the past, however, I have become increasingly alarmed in recent years about the sharp ideological tendencies of the Commission. I have expressed these concerns on several occasions to Dr. Arthur Flemming, the former Director of the Commission. While I have nothing but the highest personal respect for Dr. Flemming, I have had strong differences with the direction in which he has moved the agency.

I will summarize very briefly these differences. First, I believe that the Commission has increasingly lost sight of its original objectives and goals as a monitoring body, and a clearinghouse for information, and has focused the bulk of its attention on actively articulating a single point of view and a single perspective on civil rights policy.

Second, I believe that the Commission by and large has been closed to all but this single point of view. I believe that a large body of responsible public opinion in this country—much of it responsible for the change in administrations in 1980—has been almost totally foreclosed from participating and being heard in the decisionmaking processes of the Commission.

Third, I believe that the Commission has been totally unreceptive to anything but this single point of view on what is probably the single most important civil rights issue of our time—affirmative action. The Commission has been oblivious to the fact that many people who have been committed to the cause of civil rights for their entire life question whether or not affirmative action is the logical result of that commitment, or represents a total retreat from that commitment.

Finally, I believe that the Commission has had a tendency to focus on the inconsequential—the desexification of job titles and such—at the expense of more serious and more enduring issues, but perhaps less faddish ones.

Already it is apparent that the consensus that existed in this country for many years on civil rights has gradually been eroding as efforts have been made to redefine civil rights, to redefine its focus from one of equal opportunity to equal result. The Civil Rights Commission has been at the front of this effort. For the sake of the genuine civil rights movement, and for the sake of the Civil Rights Commission itself, I hope that the new leadership at the Civil Rights Commission will reassess where the Commission is headed.

I hope to discuss these issues at greater length with our distinguished witness today, Mr. Clarence Pendleton, the newly appointed Chairman of the Commission. We are happy to have you with us today, Mr. Pendleton, and look forward to hearing your remarks and to working with you in the future.

STATEMENT OF HON. CLARENCE PENDLETON, CHAIRMAN, CIVIL RIGHTS COMMISSION

Mr. PENDLETON. Thank you Mr. Chairman. For the sake of time to have some dialog, I will give a summary of my testimony. I am also pleased to appear before you today with respect to the U.S. Commission on Civil Rights authorization request for fiscal year

1983. Accompanying me today are John Hope III, the Acting Staff Director, and Paul Alexander, the Acting General Counsel.

The Commission has been advised that this request of $11,626,000, which represents a decrease of $692,000 and 33 permanent positions, is consistent with the President's program.

As a result of these reductions, at least two regional offices will be closed and State advisory committee activities will be reduced by 50 percent. Oversight activities involving the monitoring of civil rights enforcement will be reduced. And there will be no consultations and only one hearing held during the next fiscal year. And at least two fewer studies will be undertaken, and, in addition, the liaison activities with private groups will be reduced and almost eliminated.

In Special Analysis J of the fiscal year 1983 budget, Civil Rights Activities, the President stated:

> * * * the questions of the 1980's involve not whether civil rights problems exist, but how to most effectively resolve them. The President believes that the Commission's contributions to answering those questions can be more substantial and original than they have been.

In that context, the Commission has been focusing more of its resources on civil rights issues from an economic perspective, and economic issues will continue to play a significant role in the agency's program for fiscal year 1983. In addition to statutory reports on the economics of black farming and on employment opportunity in nonreferral unions, the Commission recently released a report analyzing the effect of the fiscal year 1982 budget decisions on civil rights enforcement activities in Federal agencies with statutory responsibility. The Commission also conducted a hearing in the Baltimore area, focusing on barriers to and opportunities for minority participation in economic development in the context of the revitalization of that city. Finally, the Commission will hold hearings next month on minority and female employment in growth industries.

During the upcoming fiscal year, the Commission expects to explore ways to reduce the cost of civil rights enforcement. The Commission is now preparing to initiate a study of State and local civil rights enforcement and a study regarding the application of cost-benefit principles to Federal equal employment opportunity and affirmative action rules and regulations. In addition, the establishment of a private industry task force is being considered to discuss how to facilitate voluntary compliance with Federal civil rights laws.

As a complement to the initiatives I have outlined above, the Commission intends to remain active in the more traditional civil rights areas. During the past year, the Commission has issued reports on affirmative action, administration of justice, education, and employment issues. I am particularly proud of the Commission's involvement in several areas. The report, "The Voting Rights Act: Unfulfilled Goals," which recommended extending and strengthening the Voting Rights Act, was used extensively in congressional consideration of the bill to extend the legislation. The Commission will vigorously monitor the implementation of this crucial act and will continue to report our findings to the President and Congress.

Second, the Commission's statutory report, "Confronting Racial Isolation in Miami," addresses in a timely fashion one of our Nation's most critical civil rights problems, the isolation of minorities in our urban centers. The Commission recognizes the need to follow up on this report, since Miami could easily serve as a microcosm of our Nation's urban problems.

Finally, the Commission has studied extensively the subject of hate groups. During the past year, several State advisory committees reported on hate groups, bigotry, and racial violence. In fiscal year 1983, a statement on violence and bigotry will be issued which examines the role of Federal law and law enforcement and the impact of Federal policies and practices in combatting this problem.

Mr. Chairman, my colleagues and I believe that the work of the Commission continues to be important to the well-being of our Nation. We look forward to continuing to provide timely and helpful reports to the President and Congress on the critical civil rights issues of the day.

Thank you for this opportunity to appear before you today to discuss the Commission and its plans for fiscal year 1983. I will be pleased to answer any questions you have concerning this authorization request or the work of the Commission generally.

This concludes the summary testimony.

Senator HATCH. Thank you, Mr. Pendleton. You have only been in this position for a number of months now. Can you share with me the nature of the changes in style or substance or administration that you have already embarked upon at the Commission?

Mr. PENDLETON. Well, I am not so certain that we have changed so much of the administration. We are looking forward now to the Judiciary Committee soon confirming the nomination of the new Commissioners; we are looking forward to a new staff director—certainly that will require confirmation by the Senate; and looking forward to bringing onboard new General Counsel. Mr. Alexander has been acting in that capacity.

I think that we still remain, in a sense, a collegial body trying to work out the kinds of activities we should get into. And I feel confident that probably the image of me portrayed in the media is not one that the staff presently has at this point. Having to get through all of that and find out where the various rooms are in the agency is about as much as I have been able to do in these 4 months.

Senator HATCH. I have been interested in some of the plans that you have for the agency—personnel, for example, I understand that you are reducing the total Commission staff by 33 people. Can you tell us a little bit about that?

Mr. PENDLETON. Well, certainly the President's request to the Congress indicates that the amount of money, the OMB-approved amount of money, $11,626,000, will necessitate the reduction in permanent staff.

Senator HATCH. Can you share with this committee some of your longer term aspirations as far as the direction and thrust of the Commission is concerned? Again, I would appreciate insights on any major refocusing of the Commission that you intend to carry out.

Mr. PENDLETON. Well, I would hope that, as I indicated in some of the summary testimony, that the formation of a voluntary task force in the private sector would provide us with some recommendations as to how the private sector could voluntarily comply with Federal laws and statutes. Hopefully I can take that request to the Commissioners in September, if not in October, when everybody hopefully at that time will be in place.

And I would hope that we could do things in a more timely fashion, issuing reports that might not be as exhaustive as we have in the past, but making attempts to stay a bit more contemporary or a bit more current on the civil rights issues that face the people of this country.

And certainly it is important that we move around a little bit. The Commissioners should get a chance to visit the various regional offices and field offices to find what people in the various areas are thinking about. This would enable us to get some of their reactions to the Commission's work and some actions that they deem appropriate for us to undertake in keeping with our statutory mandate.

Senator HATCH. Has the Commission looked at the work that the Labor and Human Resources Committee has done with regard to the EEOC and OFCCP?

Mr. PENDLETON. We just received that at the Commission, as I understand it.

Senator HATCH. We would appreciate it if you would look it over. As you know, I have been a critic of affirmative action programs, and yet, I have tried to come up with some positive approaches in this area. I would like to get your review of it, if we could.

Mr. PENDLETON. I certainly will. I think that we realize that there are differences about affirmative action. I think what we need to do is to look at the commission's affirmative action report and the report that you have issued to find out where there are similarities and differences; and where there are similarities, we should state that, and where there are differences we should try to work them out so that we can have what I would term to be a coherent and believable affirmative action policy in this country.

Senator HATCH. We have had a great deal of support from the civil rights community and the business community concerning that report.

One thing I am concerned about on affirmative action, as you know, is that in the past, studies and reports completed by the Commission on the subject of affirmative action, have demonstrated a near total lack of recognition that there existed a substantial body of criticism from individuals deeply committed to civil rights. These individuals have seen affirmative action, as interpreted by the EEOC and OFCCP, as a retreat rather than as a reaffirmation of traditional policies in the areas of civil rights and equal protection.

Are you aware of this criticism? Do you hope to allow those individuals, who are committed to civil rights, but who differ on the question of affirmative action, the opportunity to express themselves through the Commission?

Mr. PENDLETON. Certainly, I would hope that in the future it might be possible to conduct a hearing to hear the different points

of view, and, as I mentioned earlier, certainly to compare our recent report with the report that your committee has issued, and analyze those differences and document the similarities. I, too, share some concerns about affirmative action. It does not legitimize minority successes. And I am also concerned about the creaming process in affirmative action. Perhaps many people who have been able to obtain employment or entrance to universities or colleges might have gotten there without the necessary affirmative action, or they have been used to satisfy institutional or business affirmative action statistics.

With regard to OFCCP, my work with the Urban League showed me that there is need to revise the reporting requirements. We found that we took at least 5 months out of the fiscal year to report to the Federal Government. In the auditing process, the various categories of employment, especially for minorities, we felt as though we could get many more jobs for people with the limited staff that was there with the reduction requirements. I think that perhaps that needs to be reviewed very carefully and that both sides of the ledger need to be in on those discussions to make certain that when policies do come out that everyone can work with them.

Senator HATCH. As you know, a major criticism of the Commission has been that it has spewed out a constant torrent of reports and studies that have remained largely unread on Capitol Hill, and elsewhere.

Can we expect to see changes in this regard, perhaps a refocusing of attention on fewer reports but reports that will have more direct policy significance? What are your views with regard to this?

Mr. PENDLETON. Well, I share your views. I think that we need to do things in a bit more timely fashion. I am committed to that. I think that smaller hearings would provide us with greater ability to respond to the issues and would enable us to issue policy recommendations in a more timely manner. This would certainly be more appropriate.

So I would share your concerns in that context and would welcome any other suggestions you might have about the titles of reports, issues that we can get into that would certainly be of use—not just to you and the committee, but also to Congress and the President.

Senator HATCH. One recent report by the Commission related to energy development in New Mexico. It was difficult for some of us to understand what that had to do with the charter of the Commission. It reminds me somewhat of the effort, which fortunately seems to have died several years ago, to promote "minority mathematics" and "minority English" and "minority physics". The presumption seemed to me that everything had implications for minority groups in one respect or another. While I am sure that there are tangential civil rights issues involved in even the subject of energy development in New Mexico, what I am concerned about is getting the Commission to concentrate on the principal issues in civil rights that we have to resolve.

Mr. PENDLETON. I would concur that, with the budget reductions we are presently facing, we need to become a bit more pointed on the more classical issues. I hope that the things that we can do in

the future would allow us to have a faster turnaround time in reporting to you and be a bit more substantive or a bit more pointed about those issues. And we would welcome any suggestions you might have about specific topics.

Senator HATCH. The Commission will certainly earn a lot more of my support if it is able to harness its efforts, and focus its resources upon civil rights priorities.

Mr. PENDLETON. I think that you are absolutely correct. I must say that it is important to the Commission, as we have indicated, that we take on the issues again that are more contemporary, and that we focus in on those issues that begin to truly lead us to a colorblind society. I don't know whether or not we can ever reach that, but I think that people have to know that policies that come about have to contain what I am calling a racial safety net that does not cause us to perish en route from those things that are color-conscious to those things that are colorblind.

And certainly we will be coming back to you, and, again, to the President, with what we think are policy recommendations that allow those things to at least get on the road to taking place.

Senator HATCH. I have a number of other questions I would like to submit to you in writing. Let me ask one other question, however, and then I have to go vote.

You have requested a fiscal year 1983 authorization of approximately $11.6 million; and this is about a $700,000 reduction from the present fiscal year level. Could you please tell me how you propose to obtain these savings? What would be your fiscal year 1983 request if you were to maintain all the Commission operations at their current fiscal year 1982 level?

Mr. PENDLETON. The answer to the last question first, our current request would be $12,729,000 to carry out the President's mandate and to keep us on par with fiscal year 1982.

Senator HATCH. So it would be $1,100,000 more than what your present request is?

Mr. PENDLETON. That's correct.

Senator HATCH. OK.

Mr. PENDLETON. The positions here need to be maintained, and that is why we have the million-dollar-plus request. It is not an increase; it is to maintain existing positions. As we are discussing here, for the kind of work that you would like and that you suggested we undertake, it is important that we have that kind of permanent staff.

Certainly the closing of regional offices and cutting down on State advisory committee work are the kind of things you would have to do to achieve these budget reductions, or to absorb them, for that matter.

We found out what could be severely curtailed.

Senator HATCH. Thank you, Mr. Pendleton. I am going to submit several other questions to you in writing, so I can make this vote.

If you could answer these we would very much appreciate it.

Mr. PENDLETON. I would be glad to, and thank you for your time.

Senator HATCH. Thank you. We appreciate having had you before the committee today. Please do not hesitate letting us know if we can help you in any way.

And with that we will adjourn.

[The subcommittee adjourned at 10:12 a.m.]

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